IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14758 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPN.

Versus

HARJIVAN BHAGWANJI PATEL

Appearance:

1. Special Civil Application No. 14758 of 2003

MS ROOPAL R PATEL for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 12/04/2004

ORAL JUDGEMENT

The short facts of the case are that the respondent was holding the post of Conductor in the

petitioner corporation. The respondent remained absent from duty from 25.6.95 to 27.7.95. The petitioner had intimated the respondent to join the duty, but however, the respondent did not resume the duty. Ultimately, chargesheet dated 11.8.95 was issued by the petitioner to the respondent workman. The respondent did not reply to the said chargesheet. On different dates from 4.9.95 to 10.1.1996, on seven days the intimation was given to the respondent workman by the IO but the respondent did not remain present nor participated in the inquiry and ultimately the IO had proceeded exparte and the inquiry was concluded and the charges were found to be proved. On 11.1.1996 a show cause notice was issued to the respondent workman as to why he should not be dismissed from service. The respondent workman submitted reply on 16.1.1996 which was found to be unsatisfactory and the disciplinary authority imposed punishment of dismissal from service as per decision, dated 30.1.1996. The respondent preferred departmental appeal which came to be rejected on 24.9.96. The matter was carried in second departmental appeal by the respondent and at that stage lenient view was taken and the punishment of dismissal from service was modified as per decision dated 11.3.96 and the respondent was reinstated in service but the period of dismissal from service till reinstatement was treated as leave without pay and the punishment of lesser penalty of stoppage of increments for three years with future effect was imposed upon the respondent workman.

2. The respondent raised the dispute against the aforesaid decision of the petitioner of imposing punishment of stoppage of three increments with future effect which ultimately came to be referred to the Industrial Tribunal for adjudication being Ref(IT) No.42/99. The Industrial Tribunal exercised powers under section 11A of the I.D.Act and substituted the punishment of withholding one increment without future effect and directed for payment of 75% backwages and the award for such purpose was passed on 30.10.2002 by the tribunal. The petitioner corporation has approached this court challenging the said award of the Industrial Tribunal.

3. Heard Ms.Patel for the petitioner and Mr.Songara for Mr.Rathod on behalf of respondent. As such the absenteeism of driver or conductor in a public transportation service without prior sanction of leave can be said to be a serious misconduct because it will have not only adverse affect and repercussions upon the transport service but will also cause lot of inconvenience to the public at large. Had it been the

case where the leave is applied for sickness, the matter can be examined differently. In the present case for the absenteeism is on the ground of the sickness and it is the defence of the respondent workman that on account of sickness he could not remain present and the leave was applied for. However, the pertinent aspect is that such defence was neither raised in response to chargesheet nor such defence was raised during the course of inquiry. As such the respondent workman has remained absent in the departmental inquiry and has not availed of the opportunity given to him for participating in the departmental inquiry. If the opportunity is given to the workman for participating in the departmental inquiry and if no defense is raised or such opportunity is not availed of by the workman concerned, it can not be said that the IO was not justified in concluding that the charges are proved. If the matter is considered on the basis that the charges are proved then it becomes the case of absenteeism from service in a public transportation or semi-Govt corporation. The aforesaid is coupled with the additional aspect that even otherwise also there was no balance of sick leave at the credit of the workman concerned. The labour court inspite of the aforesaid found that the absenteeism is not with malafide purpose and therefore the punishment is disproportionate. In my view the fact of not raising the defence in response to the chargesheet and the fact of nonparticipation in the departmental inquiry, both show serious doubt upon the genuineness of the ground raised for the first time after conclusion of inquiry and the aforesaid aspects could not have been ignored by the labour court even while giving weightage and consideration to the proceedings of departmental inquiry. The labour court on the face of it has not considered the important aspects that such defence on ground of sickness, forwarding of medical certificate was neither raised nor contended in the proceedings of departmental inquiry. The labour court as such has not separately examined the proceedings of departmental inquiry, its legality and has also not examined as to whether the findings of the IO are proper or not. It has as such mixed with the issue of departmental inquiry, proof of chargesheet and proportion of the punishment. In my view, if the charge of absenteeism in public transport service is proved, the punishment imposed in the second departmental appeal against the workman concerned for withholding of three increments with future effect and treating the period of leave without pay from the date of dismissal till the reinstatement can not be said to be a punishment wholly disproportionate to the misconduct for the charges proved. The powers of industrial tribunal

adjudicating the reference under section 11A on the punishment are not that of a court of appeal. As per the settled legal position the question is whether a prudent employer would impose such punishment for such misconduct and, if the answer is 'yes', there will not be any jurisdiction with the court to interfere with the punishment imposed by the employer. If the punishment is found to be wholly disproportionate to the misconduct proved against the wrokman concerned, then only the jurisdiction of the court under section 11A of the Act would be attracted and the court may substitute the punishment. As observed earlier, the punishment imposed upon the workman by the appellate authority in the second appeal is already a lenient view taken upon the workman concerned for absenteeism in a public transport service and therefore the Industrial Tribunal has clearly exceeded in exercise of its jurisdiction under section 11A for substituting the punishment by withholding of one increment without future effect. It can be said that the industrial tribunal has clearly exceeded in exercise of its jurisdiction and therefore the award passed by the industrial tribunal for substituting the punishment can not be sustained in the eye of law.

4. In view of the aforesaid discussion, the award passed by the industrial tribunal dated 30.10.2002 passed in Ref (IT) No.42/99 is quashed and set aside, The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

12.4.04 (JAYANT PATEL,J)